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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 583

CECIL B. SANNER and MARY W. SANNER,

Petitioners

v.

THE TRUSTEES OF THE SHEPPARD AND ENOCH PRATT HOSPITAL,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioners, Cecil B. Sanner and Mary W. Sanner, petition this Court for a writ of ceriorari to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on July 1, 1968.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at_____ F.2d ____, and is reprinted in the appendix hereto at p. A-1, *infra*. The un-

reported order of the United States District Court for the District of Maryland is printed in the record at p. R-App. 25, and the opinion of the District Court is reported at 278 F.Supp. 138, and printed in the record at p. R-App. 15.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on July 1, 1968.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. Does the judicially created doctrine of charitable immunity, which totally bars any right of action in tort against a private corporation, characterized as a charitable institution, violate Article XIV, Section I of the Constitution of the United States, and is such denial of a right of action the taking of property without due process of law?

2. Is it a violation of the due process clause of Article XIV, Section I of the Constitution of the United States to deny to a party any right of action against a private corporate tortfeasor, which is characterized as a charitable institution, under the doctrine of charitable immunity, when the charter of such private corporation specifically provides said corporation with the powers to "sue and be sued"?

3. Is it a violation of the equal protection clause of Article XIV, Section I of the Constitution of the United States when the doctrine of charitable immunity, aforesaid, singles out tort claimants and totally bars any tort action by them against a private corporate tortfeasor, yet does not bar any other forms of actions for damages against such private corporation?

4. Is the doctrine of charitable immunity aforesaid which totally bars any action in tort against a private corporate tortfeasor, and any alleged statutory approval thereof, imposing a penalty on such tort claimants couched in lan-

guage so broad as to be indeterminate, indefinite and vague in violation of the due process clause of Article XIV, Section I of the Constitution of the United States?

5. Is not Article 48A § 480 of the Annotated Code of Maryland (1957 Ed.), alleged to be legislative approval of the doctrine of charitable immunity violative of the due process and equal protection clauses of Article XIV Section I of the Constitution of the United States for the reason set forth above?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article XIV, Section I:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

The Annotated Code of the Public General Laws of Maryland (1957 Ed.), Volume 9A—Declaration of Rights

> **Page 42, Article 19.** *Remedy for injury to person or property:* That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land.
>
> **Page 42, Article 20.** *Trial of facts where they arise:* That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People.

Page 49, Article 23. *Due process:* That no man ought to be taken or imprisoned or disseized of his freehold liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of life, liberty, or property, but by the judgment of his peers, or by the Law of the land.

Volume 5, Page 291, Insurance Code

Article 48A, § 480. *Waiver of immunity of charitable institution for torts:* Each policy issued to cover the liability of any charitable institution for negligence or any other tort shall contain a provision to the effect that the insurer shall be estopped from asserting, as a defense to any claim covered by said policy, that such institution is immune from liability on the ground that it is a charitable institution.

Volume 4, Page 181, Executive and Administrative Departments.

Article 41 § 103A. *Charitable Organizations, Definitions.* As used in this subtitle: "Persons" means any individual, organization, group, association, partnerships, corporation, or any combination of them; "charitable organization" means any benevolent, philantropic, patriotic, eleemosynary person, or one purporting to be such; "contribution" means the promise or grant of any money or property of any kind or value; and "department" means the Secretary of State of Maryland

STATEMENT OF CASE

This case is intimately concerned with the constitutional guarantees of the person under the provisions of Article XIV, Section I of the Constitution of the United States, and alleges that those guarantees are violated by the doctrine of charitable immunity.

This tort action was commenced by petitioners against respondent in the United States District Court for the District of Maryland, based upon diversity of citizenship.

Petitioners, on or about December 9, 1963 entered into a contractual relation with respondent whereby petitioner, Mary W. Sanner, would be admitted to respondent's facilities for care and treatment, in consideration of which petitioner, Cecil B. Sanner, without compensate respondent. The female petitioner was admitted to the full and exclusive care of respondent, for which it was fully compensated. On or about March 4, 1964, female petitioner fell from an upper story window or door sustaining extensive permanent injuries. Thereafter petitioners filed their complaint (p. R-App. 1) alleging respondent's negligence; further basing its right of action under the charter provisions of respondent (p. R-App. 4); and the provisions of Article 19 and 23 of the Declaration of Rights of the Constitution of Maryland.

Respondent's answer admitted it assumed full care and treatment of the female petitioner, and admitted that it was a corporation formed under the provisions of Chapter 274 of the Acts of the Maryland Legislature of 1853. Further answering, respondent denied (1) that it was an ordinary business corporation, and (2) that it was guilty of any acts of negligence. By way of positive defenses respondent alleged, (1) that it was immune from suit in tort as an eleemosynary institution, (2) that the female petitioner was guilty of contributory negligence, and (3) that female petitioner had assumed the risk.

Respondent, thereafter, filed a motion for summary judgment pursuant to the provisions of Rule 56(b) and (c) of the Federal Rules of Civil Procedure, contending that under the laws of the State of Maryland it was a charitable instituion and totally immune from suit in tort. Petitioners opposed said motion on the grounds that the granting of summary judgment would be a denial of rights guaranteed by Article XIV, Section I of the Constitution of the United States, and the synonymous and concomitant guarantees of Articles 19, 20 and 23 of the Declaration of Rights of the Constitution of Maryland.

Oral argument on the motion was presented on November 3, 1967 before the District Court, and thereafter a final

order was entered on January 2, 1968 granting respondent summary judgment. A written opinion in support of summary judgment is reported at 278 F.Supp. 138, and printed in the record at p. R-App. 15.*

Petitioners then filed an appeal to the United States Court of Appeals for the Fourth Circuit continuing their objections to the granting of summary judgment as violative of guarantees and rights under the Constitution of the United States.

On July 1, 1968 the Fourth Circuit Court affirmed the granting of summary judgment, together with a per curiam opinion reported at ___ F.2d ___, and reprinted in the appendix hereto at p. A-1).*

This matter now comes before this Court on this petition for writ of certiorari.

REASONS FOR GRANTING WRIT

1. The Fourth Circuit's approval of the granting of summary judgment herein, which summary judgment forecloses a right of action in tort against the private corporate respondent, raises novel and significant questions under Article XIV, Section I of the Constitution of the United States, deserving of consideration by this Court.

Impingement of federal constitutional guarantees by state action is the primary question herein involved. The fact that this matter is one based upon diversity of citizenship is a mere corollary.

If, as here, there is an allegation of negligence on the part of a so-called charitable institution, and the injured party seeks to proceed against said charitable institution for redress that person is totally barred from maintaining the action under the immunity doctrine. This denial of access to the courts is completely alien to the concepts of due process, justice, and fair play.

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*"R." refers to Record and "A." refers to Appendix herein.

The concepts of due process as set forth in the case of *Truax v. Corrigan*, 257 U.S. 312[1] do not contemplate such a denial of individual rights and freedoms, or the imposition of such a severe penalty. The charitable immunity doctrine first singles out victims of negligence, and then upon this condition, wholly out of the control of the victim, seeks to declare them non-persons in the eyes of the law.

In the instant matter denial to petitioners of the right to petition the courts for redress of injury inflicted by the corporate respondent herein is equally an impingement on rights guaranteed by the Constitution, and a violation of due process, as the denial of public office to one who will not first profess a belief in God[2], or denying one to marry whom he choses[3], or denying access to the courts merely because claimant is an illegitimate[4], or because claimant is mother of deceased illegitimate[5], or the state enforcing private restrictive covenants[6], or a state refusing to give full faith and credit to a sister state's laws[7].

These individual rights and freedoms were all denied by state action, until recourse was had to this Court.

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[1] *Truax v. Corrigan*, 257 U.S. 312, 322, "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society." citing, *Hurtado v. California*, 110 U.S. 516, 535.

[2] *Torcaso v. Watkins*, 367 U.S. 488.

[3] *Loving v. Comm. of Virginia*, 388 U.S. 1.

[4] *Levy v. Louisiana, et al*, 88 S.Ct. 1509.

[5] *Glona v. Amer. Guar. & Liab. Ins. Co.*, 88 S.Ct. 1515.

[6] *Shelley v. Kraemer*, 334 U.S. 1.

[7] *First Nat'l. Bank of Chicago v. United Air Lines, Inc.*, 342 U.S. 396.

> "State action, as that phrase is understood for the purposes of the Fourteenth Amendment refers to exertions of state power in all forms. And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment it is the obligation of this Court to enforce the constitutional commands." *Shelley v. Kraemer,* 334 U.S. 1, 20.

Federally asserted rights can not be discarded or ignored under the guise of local practice. *Davis v. Weschler,* 263 U.S. 22.

Under the clearly pronounced exception in *Erie R.R. Co. v. Thompkins,* 304 U.S. 64, 78, the federal courts are free to exercise independent judgment where federal constitutional rights are being impinged.

Maryland, and other states as will be shown, *infra,* have consistently denied the right of petition to the courts to seek redress for negligently inflicted injuries, where the action is alleged and directed against the so-called charitable institution.

That the right to petition the courts for redress is a constitutional guaranteed right is fundamental. *United Mine Workers of Amer. Dist 12 v. Illinois Bar Ass'n,* 88 S.Ct. 353; *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673.

Petitioners contend the right to recover damages against another who negligently inflicts injury has always been recognized as a property right. This premise was subscribed to by the District Court in its written opinion (p. R-App. 21), citing *Martinez v. Fox Valley Bus Lines,* 17 F.Supp. 576. Petitioners have asserted the invasion of a substantive right under the Federal Constitution the denial of the opportunity to be heard is a deprivation of their property without due process of law. *Brinkerhoff-Faris, supra.*

The ultimate determination of whether or not a federally asserted right is being denied by a state, either through its judiciary or statutory enactment is for this Court to determine, *Titus v. Wallick,* 306 U.S. 282.

The Constitutional rights asserted are serious, and concern extremely fundamental rights of the person, and this case, which is believed to be the first to be presented on a federal appellate level, appears most opportune to clearly determine the questions raised for far reaching future effect.

2. Respondent's charter, substantively unchanged since its enactment in 1853, provides that respondent can undertake all the normal functions of an ordinary business corporation. It further provides, *inter alia,* that said corporation can, "*. . . sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court of law or equity.*" Yet when the female petitioner was negligently injured respondent raised the doctrine of immunity to totally foreclose petitioners from any legal action against respondent.

That a so-called eleemosynary institution can sue and be sued was recognized by this Court as far back as 1819[8], about thirty-four years before incorporation of respondent, and fifty-seven years before the doctrine of charitable immunity ever crept into the law in the United States.

The socio-economic burden of the doctrine is manifest for by immunity the institution is not only able to practice its operation negligently, but then visits upon the injured, most often those least capable of coping with the financial burden of injury, the added burden of not being able to seek compensation for their injuries.

That immunity is the exception rather than the rule is highlighted in two decisions of this Court, where immunity was considered and denied from the more legitimate or valid base of *governmental or sovereign immunity,* rather than immunity as a special privilege extended to a private corporation by the state.

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[8]See Justice Story's excellent analysis of eleemosynary corporations and their rights and powers in *The Trustees of Dartmouth College v. Woodward,* 4 Wheat. 518.

This Court held that where Congress *clearly intended* governmental corporations to be amenable to suit that such corporations could not acquire the immunity of the sovereign. *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U.S. 381; *Reconstruction Finance Corp. v. J & G Minihan Corp.*, 312 U.S. 81. In the *Keifer* case, *supra*, Justice Frankfurter went so far as to observe that the Smithsonian Institution the oldest surviving governmental corporation had several times been party to litigation even in the absence of explicit authority *to sue and be sued*, though the attitude towards immunity was substantially different in 1846 from what it is today.

That a corporation of Maryland generally is liable for its torts, even such torts as libel, see the decision of this Court in *The Philadelphia, Wilmington & Balt. R. Co. v. Quigley*, 21 How. 202.

Foreclosing petitioners from access to the courts to present their claim against respondent, in the light of these additional facts is a denial of due process generally, and the taking of their property without due process of law.

3. The charitable immunity doctrine prevents a tort suit, and in Maryland is based upon the so-called *trust fund theory*, that is, damages should not be awarded in tort thereby depleting the *trust funds* of the charity. This doctrine had its birth in dicta in the English case of *Feofees of Heriot's Hospital v. Ross*, 8 Eng. Rep. 1508 (1846), which had been twice overruled in England in 1866[9] and 1871[10]. The Ross case, *supra*, though no longer valid in England, found new life as precedent for the doctrine in the United States. In 1885 the charitable immunity doctrine found its way into the law of Maryland, based on the *trust fund theory*. *Perry v. House of Refuge*, 63 Md. 20. This judicially

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[9] *Mersey Docks Trustees v. Gibbs*, 11 Eng. Rep. 1500 (1866).

[10] *Foreman v. Mayor of Canterbury*, 6 Q.B. 214 (1871)

created doctrine, and a later statutory enactment[11] directed against insurance companies, which allegedly shows approval of the Maryland Legislature, totally precludes the payment of damages for *torts.*

The fallacies of the doctrine become immediately apparent—the doctrine attempts to prevent diminution of *trust funds* by denying damages *ex delicto* being paid from such funds. However, it is obvious that tort litigants are not the only ones who seek damages, and the so-called *trust funds* can be equally diminished by the payment of damages *ex contractu.* Yet, the decisions and the specific language of the statute noted above are directed to damages for torts.

Obviously, the doctrine does not accomplish the purpose for which it was intended, but is in fact an arbitrary, invidious and discriminatory classification of litigants in clear violation of the equal protection clause of the Constitution of the United States. *Gulf C & S F R Co. v. Ellis,* 165 U.S. 154.

The effect of the doctrine is inequality, it arbitrarily discriminates between litigants, and illegitimizes tort litigants. Tort litigants are not only the victims of negligence, but under the doctrine are, in effect legally declared *non persons* with no right of access to the courts to seek redress against institutions such as respondent. The decisions and rationale in two recent cases, decided by this Court, appear particularly applicable to this *inequality. Levy v. Louisiana, et al,* 88 S.Ct. 1509; *Glona v. American Guarantee & Liability Insurance Co.* 88 S.Ct. 1515.

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[11] Article 48A § 480, Annotated Code of Maryland (1957 Ed.) the text of which is printed at page 4, is found in the insurance section and directed to insurance companies, denying to such insurers the right to claim the immunity of the institution. This statutory provision is an obvious but ineffectual attempt to offer some relief from the oppressiveness of the doctrine. The statute, if as alleged, is a manifestation of legislative approval, is as much a denial of due process as the original judicially enunciated rule.

Finally, it is submitted that it is a denial of equal protection of the laws to treat the *corporate person* and the *human person* differently, in this instance. Here the corporation can do all things such as contract and has power to *sue and be sued*, however, when the respondent negligently injures one it contracted with that person can not sue the corporate respondent. However, the converse is not true, should the human person negligently damage the respondent, in any manner, the corporate respondent has free access to the courts for redress.

4. The Fourth Circuit Court has decided an important question of federal constitutional law which has not been, but should be decided by this Court. A decision by this Court will have far reaching future effect, and will tend to unify and stablize what is presently a chaotic state of the law.

It is believed that no case has ever reached this stage of seeking certiorari from this Court to determine whether or not the doctrine of charitable immunity impinges federal constitutional guarantees.

The state of the law is so chaotic generally, and with regard to constitutional implications, that a decision by this Court will have substantial far reaching future effect as shown by the following analysis:

Of the forty-seven states that have considered the doctrine, some twenty-seven states still adhere thereto in varyinf forms, and based upon unbelievably divergent logic. Some states (such as Maryland) adhere to the doctrine based on the so-called *trust fund* theory, others subscribe to the doctrine by rejecting *respondent superior*, and still others on the figment of *implied waiver* of the victim of the victim of negligence. From these three basic theories there are innumerable extrapolations: in some instances the charitable institution is, (1) totally immune, (2) not liable to recipients of the charity, (3) liable only to strangers, (4) not liable out of charitable funds, (5) liable only to paying patients, (6) not liable in regard to non-commercial activi-

ties, (7) not liable only if not a hospital, (8) not liable if not insured, and (9) in two instances there is right to *total immunity even if insured.*

Further complicating the state of the law is the fact that four states have considered the doctrine from the aspect of constitutional impingement of rights, either from the aspect of the Federal or State Constitution. One state in a case of first impression[12] considered its own constitutional guarantees and rejected the doctrine stating that the policy of that state was "to put justice 'by due course of law' above charity". This holding was later affirmed[13]. A second state which previously accepted the doctrine abrogated it after considering its constitutional guarantees for the first time[14], and later rejected a statute which attempted collaterally, in effect, to reinstate the doctrine[15]. A third state court considering the allegations that the doctrine impinged federal and state constitutional guarantees held the doctrine constitutional[16]. And, a fourth state court also considering federal and state constitutional guarantees held the doctrine constitutional.[17]

Twenty states and the District of Columbia[18] have abrogated the doctrine, and three states, Hawaii, New Mexico, and South Dakota have never passed on the doctrine either by statute or court decision.

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[12]*Nicholson v. Good Samaritan Hospital* (Fla.), 199 So. 344.

[13]*Wilson v. Lee Memorial Hospital* (Fla.), 65 So.2d 41.

[14]*Noel v. Menninger Foundation* (Kan.), 175 Kan. 751.

[15]*Neely v. St. Francis Hospital & School of Nursing* (Kan.), 192 Kan. 716.

[16]*Fournier v. Miriam Hospital* (R.I.), 93 R.I. 299.

[17]*Makar v. St. Nicholas Church* (N.J.), 78 N.J. Super 1.

[18]*President & Dir. of Georgetown College v. Hughes,* 130 F.2d 810, 814. "When an individual human being undertakes not simply an isolated act, but a habit or business of charity, without incorporating or casting it in the form of a trust, he does not acquire immunity.

The foregoing analysis shows the complete chaos existent from the extreme of state courts holding the doctrine constitutional to other state courts holding the doctrine unconstitutional, with myriad variations therebetween.

Those states that have abrogated the doctrine, though not on constitutional grounds, have strenously assailed the rationale that brought the doctrine into existence[19] and show how completely alien the doctrine is to justice and fair play.

A decision by this Court in the instant case will effectively stabilize the law, and will have far reaching effect on much obvious future litigation.

5. Neither the judicial decision, nor any statutory provision[20] which manifests alleged legislative approval of the

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Possibly half the medical service rendered today is charity practice. So is a large share of legal service. Some physicians, and perhaps some lawyers, spend half or more of long and useful careers ministering to the sick and the troubled without pay. Many more do so habitually, but less extensively. Yet they do not have leave to be careless, notwithstanding their kindness is continuous or habitual rather than casual or occasional. Nor would they if it were conducted through or in association with others. Only when an individual institutionalizes his charitable enterprise formally, as by incorporation or possibly by creating a trust, *does he succeed in casting the whole burden of its negligent operation on those it injures.*"

[19]In abrogating the doctrine the New York Court in *Bing v. Thunig*, 2 N.Y.2d 660, 163 N.Y.S.2d 3 was prompted to take the following quotation from a sister state: "This historical item prompted one court, which recently abandoned the immunity doctrine to say, "Ordinarily, when a court decides to modify or abandon a court-made rule of long standing it starts out by saying that "the reason for the rule no longer exists". In this case, it is correct to say that the 'reason' originally given for the rule of immunity never did exist." *Pierce v. Yakima Val. Mem. Hosp. Ass'n*, 43 Wash.2d 167, 260 P.2d 768.

[20]Article 48A § 480 of the Maryland Code reprinted at p. 4, though specifically spelling out 'torts' is non specific as to what a 'charitable institution' is, or how many or what types of institutions are embraced therein.

doctrine, sets any clear standard of what a charitable institution is for the purposes of the severe penalty to be imposed, that is, foreclosure from the courts.

A search of the entire Maryland Code reveals but one section[21] where there is any reference to a charitable institution, which may serve as a standard of what is embraced in that phrase. However, if this definition is applied, then under the doctrine of charitable immunity a tort action could never be maintained against virtually anyone.

When a penalty is to be imposed, as here a denial of access to the courts for redress of a wrong, the standard should not be couched in vague, indefinite, and indeterminate terms. *Cramp v. Board of Public Instruction, Orange Cty. Fla.*, 368 U.S. 278.

6. The Fourth Circuit Court's decision in this case, which involves serious federal constitutional questions, is contrary to decisions of this Court. The full impact of the decision is that the Fourth Circuit feels constrained to follow the decisional or statutory law of the State of Maryland because this is a diversity case. This is noted in the opening portion of the opinion, wherein after noting a statutory relaxation in the doctrine, the Court states: "Ordinarily such a matter is one for state law." Citing *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938). The Court then summarily rejects petitioners' constitutional arguments.

Under the clearly enunciated exception of the *Erie doctrine* a federal appellate Court is not bound by state law where federal constitutional rights are being impinged, and in this area the court can, *and should*, exercise independent judgment. This duty is even more manifest in view of the seri-

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[21] Article 41 § 103A of the Annotated Code of Maryland reprinted at p. 4, is the only place in the Code where a definition is found for "charitable organization". The broad sweep of the language therein is such as to make even an "individual" who merely purports to be "eleemosynary" a "charitable organization". Thus, even an individual could possibly avoid tort liability under the charitable immunity doctrine.

ous constitutional rights being impinged, the chaotic state of the law, and the fact that diversity is a mere corollary of the action.

The Court of Appeals of Maryland when recently faced with a constitutional attack upon the denial of the right to sue for loss of consortium by a wife, though resolving the matter on other grounds, recognized its obligation and duty to consider the decisional rationale afresh[22].

In the light of recent decisions of this Court zealously protecting the rights of the individual from interference by the state[23], it is submitted that the Fourth Circuit's decision which continues the total denial of access to the courts by litigants in tort against institutions such as respondent, is contrary to this Court's decisions.

With regard to the statutory relaxation[24] noted by the Fourth Circuit, in its decision, though this provision does not apply to the instant case, it also is violative of the guarantees of Article XIV, Section I of the Constitution of the United States.

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[22] *Deems v. W. Maryland R. Co.*, 231 A.2d 514, 518: "But, if a past decision is found to be violative of the federal constitution, the policy of stare decisis cannot save it. *** When the attack upon the doctrine is based on federal constitutional grounds, the Court must consider the decisions afresh from the point of view, not of what is desirable as a matter of state law, but of impingement of constitutional requirements."

[23] *Torcaso v. Watkins*, 367 U.S. 488; *Loving v. Comm. of Virginia*, 388 U.S. 1; *Levy v. Louisiana, et al*, 88 S.Ct. 1509; *Glona v. American Guarantee & Liability Insurance Co.*, 88 S.Ct. 1515.

[24] Article 43 § 556A, Annotated Code of Maryland (1957 Ed.–1966 Supp.):

> "Immunity from tort liability. No Hospital or related institution as defined in this subtitle shall be immune from liability for negligence or any other tort on the grounds that it is a charitable institution; provided, however, that a hospital or related institution *which is a charitable institution* and which is insured against such liability in an amount not

CONCLUSION

For these reasons the judgment below should be reviewed on writ of certiorari.

Respectfully submitted

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less than $100,000 shall not be liable for damages in excess of the limits of such insurance." (Emphasis added)

This article, like Article 48A § 480, is another but ineffectual attempt of the legislature to afford some relief from the oppressiveness of the doctrine of charitable immunity. However, initially, the provision *does not abrogate the doctrine,* it continues the *unequal* treatment of litigants in tort claimants, and continues to be vague and indefinite since it does not define when a "hospital or related institution" is a "charitable institution".